

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Leila Green Little, et al.

Plaintiffs,

v.

Llano County, et al.,

Defendants.

Case No. 1:22-cv-00424-RP

NOTICE TO THE COURT

Over the last few days, counsel for the parties have engaged in discussions over how to deal with what the defendants regard as falsehoods and misrepresentations in the plaintiffs' post-hearing briefs—both the initial post-hearing brief that the plaintiffs filed on December 9, 2022 (ECF No. 91), as well as the reply brief that the plaintiffs filed on January 6, 2023 (ECF No. 98). The plaintiffs have acknowledged and corrected some of the false statements that appear in their brief of December 6, 2022, for which the defendants are grateful. *See* Pls.' Reply Br., ECF No. 98, at 3 n.9 (admitting that the in-house checkout program at Llano library includes each of the "butt" and "fart" books, and repudiating the plaintiffs' earlier claim that "only nine" of the 17 disputed books are available for in-house checkout); *id.* at 3 n.5 (admitting that *It's Perfectly Normal* had not been checked out for more than three years before it was weeded, and repudiating their earlier statement to the contrary).

Despite that, the defendants believe that the plaintiffs are obligated to correct or disavow additional falsehoods and misrepresentations that appear in each of their post-hearing briefs, including the reply brief that the plaintiffs filed on January 6, 2023. The parties are attempting to resolve these issues in a professional and cooperative fashion without serving or filing a Rule 11 motion. On Monday, January 9, 2023,

counsel for the defendants e-mailed counsel for the plaintiffs to offer a solution in which: (1) The plaintiffs agree to file a letter or errata sheet with the Court that corrects the factual misstatements that they do not contest yet remain uncorrected; and (2) The defendants ask the Court for leave to file a short sur-reply explaining: (a) the defendants' objections to what they regard as false factual statements in the plaintiffs' reply brief; (b) an explanation of the parties' efforts to resolve their disagreements over the remaining factual claims in the plaintiffs' brief of December 9, 2022, that the defendants continue to regard as false; and (c) a short refutation of the plaintiffs' claim in their reply brief that the defendants are arguing or implying that this case or the motion for PI are "moot." *See Exhibit 1.* Under this offer, the plaintiffs would agree not to oppose the filing of this sur-reply, which the defendants would show the plaintiffs in advance. The filing of such a sur-reply would (in the defendants' view) obviate any need to serve a Rule 11 motion. *See id.*

On Wednesday, January 11, 2023, Ellen Leonida, counsel for the plaintiffs, e-mailed Jonathan F. Mitchell, counsel for the defendants, to say: "We are in receipt of your e-mail and will respond early next week." *See Exhibit 1.* But since briefing on the preliminary injunction is now complete (and has been complete since January 6, 2023), the plaintiffs' decision to wait until next week before responding to the defendants' offer presents a risk that this Court could rule on the motion for preliminary injunction before the parties can reach an agreement and before the defendants move for leave to file a sur-reply.

The defendants therefore wish to inform the Court of these developments and respectfully ask the Court not to rule on the motion for preliminary injunction until the parties can reach agreement on how to resolve their disputes over the factual claims in the plaintiffs' post-hearing briefs. It is also very likely that the defendants will request leave to file a sur-reply in the next few days.

Respectfully submitted.

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Dated: January 12, 2023

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CERTIFICATE OF SERVICE

I certify that on January 12, 2023, I served this document through CM/ECF upon:

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